

**AMENDMENT TO H.R. 2356, AS REPORTED**  
**(SHAYS SUBSTITUTE)**

**OFFERED BY \_\_\_\_\_**

Add at the end title II the following new subtitle:

1 **Subtitle C—Exemption of Commu-**  
2 **nications Pertaining to the Sec-**  
3 **ond Amendment of the Constitu-**  
4 **tion**

5 **SEC. 221. FINDINGS.**

6 Congress finds the following:

7 (1) The Second Amendment to the United  
8 States Constitution protects the right of individual  
9 persons to keep and bear arms.

10 (2) There are more than 60,000,000 gun own-  
11 ers in the United States.

12 (3) The Second Amendment to the Constitution  
13 of the United States protects the right of Americans  
14 to carry firearms in defense of themselves and oth-  
15 ers.

16 (4) The United States Court of Appeals in *U.S.*  
17 *v. Emerson* reaffirmed the fact that the right to keep  
18 and bear arms is an individual right protected by  
19 the Constitution.

1           (5) Americans who are concerned about threats  
2           to their ability to keep and bear arms have the right  
3           to petition their government.

4           (6) The Supreme Court, in *U.S. v. Cruikshank*  
5           (92 U.S. 542, 1876) recognized that the right to  
6           arms preexisted the Constitution. The Court stated  
7           that the right to arms “is not a right granted by the  
8           Constitution. Neither is it in any manner dependent  
9           upon that instrument for its existence.”.

10          (7) In *Beard v. United States* (158 U.S. 550,  
11          1895) the Court approved the common-law rule that  
12          a person “may repel force by force” in self-defense,  
13          and concluded that when attacked a person “was en-  
14          titled to stand his ground and meet any attack made  
15          upon him with a deadly weapon, in such a way and  
16          with such force” as needed to prevent “great bodily  
17          injury or death”. The laws of all 50 states, and the  
18          constitutions of most States, recognize the right to  
19          use armed force in self-defense.

20          (8) In order to protect Americans’ constitu-  
21          tional rights under the Second Amendment, the  
22          First Amendment provides the ability for citizens to  
23          address the Government.

24          (9) The First Amendment to the United States  
25          Constitution states that, “Congress shall make no

1 law respecting an establishment of religion, or pro-  
2 hibiting the free exercise thereof; or abridging the  
3 freedom of speech, or of the press; or of the right  
4 of the people to peaceably assemble, and to petition  
5 the Government for a redress of grievances.”.

6 (10) The Supreme Court recognized and em-  
7 phasized the importance of free speech rights in  
8 *Buckley v. Valeo*, where it stated, “A restriction on  
9 the amount of money a person or group can spend  
10 on political communication during a campaign nec-  
11 essarily reduces the quantity of expression by re-  
12 stricting the number of issues discussed, the depth  
13 of their exploration, and the size of the audience  
14 reached. This is because virtually every means of  
15 communicating ideas in today’s mass society re-  
16 quires the expenditure of money. The distribution of  
17 the humblest handbill or leaflet entails printing,  
18 paper, and circulation costs. Speeches and rallies  
19 generally necessitate hiring a hall and publicizing  
20 the event. The electorate’s increasing dependence on  
21 television, radio, and other mass media for news and  
22 information has made these expensive modes of com-  
23 munication indispensable instruments of effective po-  
24 litical speech.”.

1           (11) In response to the relentlessly repeated  
2           claim that campaign spending has skyrocketed and  
3           should be legislatively restrained, the *Buckley* Court  
4           stated that the First Amendment denied the govern-  
5           ment the power to make that determination: “In the  
6           free society ordained by our Constitution, it is not  
7           the government but the people—individually as citi-  
8           zens and candidates and collectively as associations  
9           and political committees—who must retain control  
10          over the quantity and range of debate on public  
11          issues in a political campaign.”.

12          (12) In *Buckley*, the Court also stated, “The  
13          concept that government may restrict the speech of  
14          some elements of our society in order to enhance the  
15          relative voice of others is wholly foreign to the First  
16          Amendment, which was designed ‘to secure the  
17          widest possible dissemination of information from di-  
18          verse and antagonistic sources,’ and ‘to assure un-  
19          fettered exchange of ideas for the bringing about of  
20          political and societal changes desired by the  
21          people’ ”.

22          (13) Citizens who have an interest in issues  
23          about or related to the Second Amendment of the  
24          Constitution have the Constitutional right to criticize  
25          or praise their elected officials individually or collec-

1       tively as a group. Communications in the form of  
2       criticism or praise of elected officials is precious  
3       protected as free speech under the First Amendment  
4       of the Constitution of the United States.

5           (14) This title contains restrictions on the  
6       rights of citizens, either individually or collectively,  
7       to communicate with or about their elected rep-  
8       resentatives and to the general public. Such restric-  
9       tions would stifle and suppress individual and group  
10      advocacy pertaining to politics and government—the  
11      political expression at the core of the electoral proc-  
12      ess and of First Amendment freedoms—the very en-  
13      gine of democracy. Such restrictions also hinder citi-  
14      zens' ability to communicate their support or opposi-  
15      tion on issues concerning the right to keep and bear  
16      arms to their elected officials and the general public.

17          (15) Candidate campaigns and issue campaigns  
18      are the primary vehicles for giving voice to popular  
19      grievances, raising issues and proposing solutions.  
20      An election, and the time leading up to it, is when  
21      political speech should be at its most robust and un-  
22      fettered.

1   **SEC. 222. EXEMPTION FOR COMMUNICATIONS PERTAINING**  
2                   **TO THE SECOND AMENDMENT OF THE CON-**  
3                   **STITUTION.**

4       None of the restrictions or requirements contained in  
5 this title shall apply to any form or mode of communica-  
6 tion to the public that consists of information or com-  
7 mentary regarding the statements, actions, positions, or  
8 voting records of any person who holds congressional or  
9 other Federal office, or who is a candidate for congres-  
10 sional or other Federal office, on any matter pertaining  
11 to the Second Amendment.